

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION

PATRICIA CAPREZ,

Plaintiff,

v.

Case Number: 16-735

RIGHT STEP, INC.;
REBECCA FITCH,
Individually and as
agent for Right Step, Inc.,

Defendants.

**PLAINTIFF'S FEBRUARY 27, 2017 MOTION
TO COMPEL DISCOVERY AND FOR DISCOVERY SANCTIONS**

The Plaintiff, Patricia Caprez, through her attorneys, Alan C. Olson & Associates, S.C., by Nicholas M. McLeod, provides to the Court and moves as follows:

1. On October 19, 2016, the Court held a scheduling conference and issued a Scheduling Order in the Court Minutes *via* ECF.
2. The Court's Scheduling Order required the parties to exchange initial Fed R. Civ. P 26 disclosures by October 28, 2016 and to complete discovery by March 24, 2017.
3. The Plaintiff provided her initial disclosures to the Defendants' counsel by mail and email on October 28, 2016.
4. Neither Defendant has provided the Plaintiff with initial disclosures pursuant to Fed. R. Civ. P. 26(a)(1) *et seq.* or the Court's Order to this date.

5. On November 9, 2016, I emailed Atty. Brennan at [pbrennan@brennanlawllc.com], the email address he registered with the Wisconsin Bar and has used to communicate with me in this litigation, and asked him, “When do you plan to send the Defendant’s R26 disclosures? The deadline to comply with the rule was 10/28/16 per the scheduling order.” Atty. Brennan did not reply.
6. On November 22, 2016, I sent Atty. Brennan a letter at his law office stating, “The Parties’ Rule 26(a) initial disclosures were due on October 28, 2016. I contacted you by email on November 9, 2016 because I did not receive the Defendants’ disclosures, but I have not heard from you. Please forward the Defendants’ disclosures to me, so we can begin making decisions about depositions and other discovery. Thank you.” Atty. Brennan did not reply and did not issue the initial disclosures.
7. On January 3, 2017, the Plaintiff issued the Defendants discovery requests by mail and *fax*, a copy of which is attached hereto as Exhibit A.
8. The Plaintiff’s January 3, 2017 discovery requests included 27 requests for documents (Fed R. Civ. P. 34), 25 Interrogatories (Fed R. Civ. P. 33), and 29 Requests for Admissions (Fed R. Civ. P. 36).
9. The January 3, 2017 requests reiterated a demand for the Fed R. Civ. P. 26 initial disclosures and information, among other relevant requests.
10. On February 7, 2017, I emailed Atty. Brennan as follows, “Pat, I issued discovery requests on 1/3/17 in this matter. Are the responses forthcoming?”

11. On February 8, 2017, I wrote Atty. Brennan *via* mail and email, as follows, “I have not received responses to the Plaintiff’s discovery requests dated January 3, 2017. I emailed you on February 7, 2017 inquiring about whether the responses were forthcoming, but I have not heard back from you. I also still have not received the Defendants’ Rule 26 initial disclosures, which were due in October 2016, and about which I have followed up several times. Please call me at my office to discuss this matter as soon as possible. Thank you.”
12. I received an email from Atty. Brennan on February 10, 2017 stating,
“Nicholas: I expect to complete the discovery responses sometime next week and will forward them to you once completed.”
13. Atty. Brennan did not call me and did not offer any explanation for not providing initial disclosures or cooperating with discovery.
14. One week later, on February 17, 2017, I received the following email,
“Nicholas: I’m still in the process of formulating these responses but intend to have them out w/in the next week. I apologize for the delay.”
15. As of the date and time of this submission on February 27, 2017, the Plaintiff still has not received any initial disclosures or discovery responses from the Defendants.
16. The Plaintiff has undertaken reasonable efforts and has exhausted such efforts to resolve this issue informally and without the involvement of the Court.

WHEREFORE, the Plaintiff requests the following relief from the Court:

- A. An Order from the Court for entry of Default Judgment against the Defendants for egregious, ongoing, and unexplained discovery and disclosure failures. Fed R. Civ. P. (b)(2)(A)(i-vii), Fed R. Civ. P. 37(d)(3).

Or, in the alternative:

- B. An Order from the Court holding the Defendants in contempt for violating its Scheduling Order and the Rules of Civil Procedure regarding discovery and initial disclosures. Fed R. Civ. P. 37(b)(2)(A)(vii).
- C. An Order from the Court requiring that the Defendants issue Fed R. Civ. P. 26 Initial Disclosures forthwith, but precluding Defendants from using any such information in motion practice or at trial in this action. Fed R. Civ. P. 37(A) & 37(C)(1).
- D. An Order from the Court requiring that the Defendants respond to all Requests for Documents and produce the documents forthwith. Fed R. Civ. P. 37(B)(iv), 37(d)(3).
- E. An Order from the Court requiring that the Defendants respond to all Interrogatories forthwith. Fed R. Civ. P. 37(B)(iii) and Fed R. Civ. P. 37(d)(3).
- F. An Order from the Court deeming all twenty-nine January 3, 2017 Requests for Admissions admitted pursuant to Fed R. Civ. P. 36(a)(3), and disallowing the Defendants from moving to withdraw the admissions due to the egregious discovery failures and deficiencies. Fed R. Civ. P. 36(a)(3), 36(b), and 37(b)(2)(A)(i-ii).

- G. An Order from the Court extending the Plaintiff's deadline to complete discovery until June 1, 2017, to allow for depositions and anticipated follow up written discovery requests from those depositions. Fed R. Civ. P. 37(b)(2)(A)(iv).
- H. An Order tolling Plaintiff's dispositive motion deadline from April 25, 2017 until July 14, 2017. Fed R. Civ. P. 37(b)(2)(A)(iv).
- I. An Order from the Court that Defendants' discovery and dispositive motion deadlines shall not be extended or tolled due to its delays and failures to participate in discovery. Fed R. Civ. P. 37(b)(2)(A).
- J. An Order from the Court granting Plaintiff's actual attorney fees in connection with pursuing discovery and filing this Motion. Fed R. Civ. P. 37(a)(5)(A).

Dated this 27th day of February, 2017.

s/ Nicholas M. McLeod
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